IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4441 of 1995
WITH
SPECIAl CIVIL APPLICATION NO.6827 of 1998
WITH
CIVIL APPLICATION NOs. 404 OF 2000 & 3208 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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THAKAR KANAIYALAL RASIKLAL
Versus
STATE OF GUJARAT

Appearance:-
1. Special Civil Application No. 4441 of 1995
M/S TRIVEDI & GUPTA for Petitioner No. 1
MR PK JANI for Petitioner No. 1
MR RC JANI for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1
MR PK JANI for Respondent No. 2
MR RC JANI for Respondent No. 2
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

C.A.V. JUDGEMENT

Date of pronouncement:17/06/2002

In both these petitions and connected civil applications common questions are raised by the respective petitioners asserting their right to perform puja as popularly known as "Bhattaji Pujari" at the

temple of Arasuri Ambaji(popularly known as Ambaji temple) situated at Ambaji, taluka Danta, Dist.Banaskantha, Gujarat State.

2. The short facts by way of historical background are that about more than 1000 years back the temple of Arasuri Ambaji Mataji set up during the period of King of Danta State and installation (pratisthapan) of Godess Arasuri Ambaji was made at the said temple during the life of time of said king of Danta with a pious hope that the grace of the Godess may shower upon the king and other worshipers of Ambaji Mataji. It is stated that the King of Danta had given the worship rights to Audichya brahmins of Sidhpur who were well-versed in holly pronunciation of mantras and rituals of vidhi and these brahmins were known as Bhattaji Pujaris. It is stated that because of blessings of Ambaji Mataji there are lacs of people not only from Gujarat but also from neighbouring States of the country as well as from different parts of the country and these people are visiting the temple for offering their pujas and for having darshan of Ambaji Mataji and as a result thereof Ambaji Mataji temple became important from the point of view of religious sentiments as well as from the point of view of its revenue to be distributed for the public at large including the beneficiaries thereof.

3. The State Govt wanted to regulate the administration of the temple and also wanted to develop the temple and one of the important placees of Indian culture and therefore a resolution was passed by the State of Gujarat dated 17.3.60 whereby the administration of Ambaji Mataji temple was continued with the State Govt and a scheme was framed for its administration which interalia included clause 39 for appointment of Pujaris. The said Clause 39 of the said scheme provided as under:

"39.Appointment of pujaris:

The contract of the present pujari should be terminated as soon as possible, and a learned religious minded brahmin who can help in setting up a centre of Sanskrit learning and Bharatiya Culture at Ambaji, should be appointed. He would

be the chief Pujari and the assistance given to him in the puja work should also be sufficiently qualified. Applications for the appointment of the pujari and his assistants should therefore be invited after prescribing suitable qualifications. The qualifications for a pujari should as for a possible among others are:

(i) Good knowledge of Sanskrit and scriptures, preferably a degree of Sanskrit or Acharya of a recognised institution;

(ii) proficiency in Pourchitya and ability to perform Yagnas, particularly Shatachandi and Maharudra according to Vedic and Shastric rites;

(iii) initiated into navrans and [panchdeshi and acquainted with Dakshina Achara Shakti Pujana.

(iv) ability to recite vedas, particularly, Shukla Yajurveda and/or rigveda.

This procedure should be followed whenever the post of pujari becomes vacant. His assistants in puja should also be properly qualified."

4. Since the contract of the present pujari was to be terminated and the appointment of pujari as per clause 39 of the scheme was to be made at that stage Ramshankar Mangalji Thaker and two others preferred Civil Suit No.77/67 in the court of Civil Judge (SD) at Palanpur for establishing their hereditary vested right to perform puja of Ambaji Mataji and also prayed for injunction. In the said suit, ultimately, on 18.2.69 a written purshis

by way of compromise was submitted by Madhavlal Lallubhai Pandya, Ramshankar Maganlji Thaker and Kantilal Mohanlal Thaker and Kannaiyalal Rasiklal Thaker whereby it was declared, interalia, that they are abandoning their so called rights and are unconditionally withdrawing the suit on account of their request for their appointment as Bhattji Pujari of Mataji Ambaji temple for the period of 20 years and not more being accepted by the State Government. In the said purshis it was agreed by the aforesaid four persons that every one of them will be entitled to perform puja for a period of five years each. The said compromise in any case has come to an end at the expiry of period of twenty years which in the present case would be in the year 1989. Therefore, the said aspect would not be of much relevance save and except

that there was abandonment of right to perform puja unconditionally and the right to claim was only for 20 years and not more. It appears that pursuant to said compromise purshis, the aforesaid four persons including their legal heirs, subject to conditions of compromise, continued to perform puja as Bhattji Pujaris.

5. Thereafter, on 18.4.94 Thaker Bhanuprasad Ramshankar, Pandya Bharatkumar Madhavlal and Thaker Mahendrakumar Kantilal made a representation to the Chairman of the Ambaji Mataji Devasthan Trust stating that the present contract is to expire on 18.5.94 and therefore from 19.4.94 onwards they may be granted contract for performance of puja claiming that Pandya Madhavlal Lallubhai, who was the father of Thaker Bhanuprasad Ramshankar and Thaker Kantilal Mohanlal who was the father of Thaker Mahendra Kantilal were performing puja and therefore their heirs, namely, Bharatkumar, Bhanuprasad and Mahendra may be continued to perform puja by way of new contract. On 16.5.94 the Government took decision to continue performance of puja by Bhattji Kannaiyalal Rasiklal Thaker upto 16.6.94 by way of temporary arrangement and thereafter on 15.6.94 an order was passed by the State Govt to continue Kannaiyalal Rasiklal Thaker as Bhattji Pujari from 16.6.94 to 15.6.95. As an outcome of the aforesaid order it appears that the compromise which was for a period of 20 years came to be continued upto 1994 and thereafter said Kannaiyalal Rasiklal Thaker has continued for a further period of one year as Bhattji pujari. At stage, of the expiry of period of the contract for performance of puja which was upto 15.6.95 said Thaker Kannaiyal Rasiklal preferred Special Civil Application No.4441/95 before this court on 2.6.95 for direction to the State Govt to recognise the petitioners' hereditary right of worship coupled with the right to offerings to Mataji Ambaji and also for quashing the action of the State Govt to deny the exercise of right of worship to the petitioners. Said petition was admitted but no interim order was passed.

6. It appears that on 4.3.95 the State Govt passed order for appointment of five persons in rotation as pujari for one year each and the said period was to start from 16.6.94 onwards, i.e. for the year 1994-95 Kannaiyalal Rasiklal Thaker, for the year 1995-96 Madhavlal Lallubhai, for the year 1996-97 Ramshankar Mangalji, for the year 1997-98 Kantilal Mohanlal Thaker and for the year 1998-99 Krishnalal Vithalji Thaker. An important aspect which is required to be noted is that the name of Krishnalal Vithalji Thaker came to be inducted for the first time by the aforesaid order dated 4.3.95. Various terms and conditions for appointment are

provided. One of such condition is that if during the period of appointment the persons concerned expires then the State Govt.can make appointment of one of the competent legal heirs of the deceased, but the legal heirs will not be entitled to claim any right of appointment after the death of the Bhattji pujari. Condition No.18 provides that the appointment is for a period of one year but if the Govt. finds it proper it can terminate the appointment without any notice. The order dated 4.3.95 for appointment of aforesaid five persons as Bhattji pujari by rotation for one year each continued to operate upto the turn of Kantilal Mohanlal Thaker and not only that but even Krishnalal Vithalji Thaker's turn was to begin from 16.6.98 and no effective steps were taken by the State Govt. to see that Krishnalal Vithaji Thaker is assigned with the work of performance of puja from 16.6.98 and said Krishnalal Vithalji Thaker had made a representation to the State Govt on 5.6.98 and in the said representation it was requested that the attempts are made to see that the present pujaris, namely, legal heir of Kantilal Mohanlal Thaker is continued. Though Krishnalal Vithalji Thaker had legitimate right to perform puja as per order dated 4.3.95 it appears that on 15.6.98 the State Govt passed order to continue Mahendrakumar Kantilal Thaker as Bhattji Pujari until further orders. However, ultimately, on 13.8.98 order came to be passed by the State Govt whereby the continuation of Mahendrakumar Kantilal Thaker as pujari was ended and it was ordered to give charge to Krishnalal Vithalji Thaker from13.8.98 and he was authorised to work as pujari upto 12.8.99 for a period of one year and said Krishnalal Vithalji Thaker had taken over the charge and started performing puja pursuant to said order. However, it appears that on 20.8.98 the State Govt passed an order and terminated the appointment of Krishnalal Vithalji Thaker and appointed Kanaiyalal Rasiklal Thaker as Bhattji pujari from 20.8.98 to 19.8.99 and the said order of terminating the appointment of Krishnalal Vithalji Thaker as pujari is challenged in Special Civil Application No.6827/98. Pending said special civil application on 21.8.98 order came to be passed by this court (Coram: M.S.Parikh,J) which reads as under:

"Leave to delete respondent No.3.

Rule. Service of rule is waived by Mr.K.T.Dave, Ld.AGP appearing for respondent Nos 1 & 2 and Mr.Kamal Trivedi, learned advocate appearing for respondent No.4.

By consent following direction is issued:

Respondent No.1 will appoint any one out of Shri

Madhavbhai Lallubhai, Ramshankar Thaker or Kantilal Mohanlal Thaker to work as Bhattji Pujari till this petition is finally heard and disposed of. It is, however, clarified that neither the petitioner nor respondent No.4 will be so appointed till the final disposal of this petition.

Office to place this petition for final hearing along with special civil application No.4441/95 on 19th September, 1998.

It is made clear that the parties will file their respective affidavits at least one week before the date of final hearing and complete their pleadings. It is also made clear that the aforesaid arrangement is only ad hoc arrangement and will not be treated as conferring any right to any of the parties."

7. The said Krishnalal Vithalji Thaker, pending the petition, expired on 27.9.01 and in his place his legal heirs Vishnuprasad K.Thakar is brought on record as the legal heir of the petitioner. Bharatkumar M.Padia, Mahendrakumar Kantilal Thaker and Bhanuprasad Ramshankar Thaker who were ordered to be appointed as Bhattji Pujaris pending Special Civil Application No.6827/98 pursuant to order dated 21.8.98 of this court have preferred Civil Application No.9542/01 in Special Civil Application No.6827/98 praying that they may be allowed to perform puja till the final disposal of the petition. One Rohitkumar Vishnuprasad Thakar who is claiming that his father was performing puja of Ambaji Mataji for last 40 years has filed Regular Civil Suit No.180/01 together with his brother and the said suit is pending and therefore he may be implemented as party to the proceedings of the Special Civil Application No.6287/98 and for the said purpose Civil Application No.404/02 is preferred.

8. Civil Application No.3208/02 is also preferred by Bharatkumar M.Padhya, Mahendrakumar Kantilal Thakar and Bhanuprasad Ramshankar Thakar who are appointed to perform puja by interim order dated 21.8.98 of this court have joined themselves as party in the proceedings of Special Civil Application No.6827/98.

9. I have heard Mr.Thakar for the petitioners in Special Civil Application No.4441/95, Mr.P.K.Jani for the petitioners in Special Civil Application No.6827/98 and Mr.Nanavaty appearing with Mr.Hasurkar for applicants in Civil Application Nos.9542/01 and 3208/02 and Mr.Bipin Mehta for Mr.A.R.Lakhia for applicants in Civil Application No.404/02 and Mr.S.N.Shelat, Ld.AG with Mr.A.D.Oza, Ld.GP for respective respondents of the Civil

Applications and all addressed the court on merits as Special C.A.Nos 4441/95 and 6827/98 and C.A.s are finally heard.

10. Mr.Thakkar the Ld. Counsel, appearing for the petitioners of Special C.A.No.4441/95 submitted that the right to perform puja is a hereditary right and he submitted that such right is recognised by the private Hindu Law. Mr.Thakkar relied upon the judgment of Apex Court in the matter of Mst.Raj Kali Keur vs Ram Rattan Pandey reported in AIR 1955 SC 493 to contend that the right to perform puja is customary Hindu right which also inherits to Hindu female. Mr.Thakkar therefore submitted that since the forefathers of the petitioners of Special Civil Application No.4441/95 were performing puja since the establishment of the temple and since the State Govt also continued with the recognition of such rights, more particularly, when the settlement was arrived at in the proceedings of Civil Suit No.77/61 he submitted that the State Govt is bound to recognise the petitioner's hereditary right of worship at the temple and the action of denying such rights should be quashed. Mr.Thakkar submitted that though his prayer is for recognition of rights of the petitioner only, but the petitioners have no objection if such right is also recognised as the right of the legal heirs of other pujaris who were parties to the settlement in the proceedings of Civil Suit No.77/61, namely, Madhavlal Lallubhai Padhya, Ramshankar Mangalji Thaker and Kantilal Mohanlal Thaker in addition to the rights of the petitioner.

11. Mr.Nanavaty, the Ld. Counsel, appearing for Bharatkumar M.Padhya, Mahendrakumar Kantilal Thaker and Bhanuprasad Ramshankar Thaker, applicants of Civil Application No.3208/02 supported the contention of the petitioner and he further submitted that after the expiry of period of settlement which was made in the proceedings of Civil Suit No.77/61 since the Govt had continued the petitioner as well as applicants being the legal heirs of other pujaris as Bhattji pujaris the declaration made for unconditional abandonment or withdrawal of the so called rights of performing puja can not be enforced against the petitioner and his clients, since the State Govt had by implied conduct subsequently continued to recognise said hereditary right of performance of puja and therefore Mr.Nanavaty submitted that the State Govt is bound to recognise the hereditary right of the petitioner and his clients of performing puja at Ambaji Mataji temple.

12. On behalf of State Govt Mr.S.N.Shelat, Ld.AG appearing with Mr.A.D.Oza, Ld.GP submitted that after framing of the scheme there was no right whatsoever of

the petitioners, i.e. Thakar Kannaiyalal Rasiklal or any other person and he further submitted that the Govt had a right to make the appointment of pujaris as per Clause 39 of the Scheme. However, on account of compromise in the proceedings of civil suit the Govt did not enforce and acted upon the clause 39 of the Scheme and continued the plaintiffs and their legal heirs of Civil Suit No.77/61 as pujaris. Mr.Shelat submitted that, as a matter of fact, there is an unconditional abandonment of any right of performing puja and therefore the petitioner and other similarly situated persons having taken benefit of settlement now can not contend that even after the expiry of period of 20 years they will continue to assert their right of performance of puja. Mr.Shelat also submitted that, in any case, it does not lie in the mouth of the petitioner to contend that after expiry of period of more than 20 years that they have traditional/customary right to perform puja which can not be taken away or curtailed.

13. It is true that the Apex Court in the matter of Mst.Raj Kali Kuer (supra) held that that the right to perform puja is recognised under Hindu Law, but such right, if at all, was there with the petitioners, the same was asserted by the petitioners while preferring Civil Suit No.77/61. However, in the proceedings of Civil Suit No.77/61 there is an unequivocal and unconditional abandonment of any such right to perform puja upon the decision of the Govt having accepted the request of the plaintiffs of the said suit to perform puja for 20 years and no more. It can not be said that the said right continued beyond expiry of period of 20 years and thereafter all rights which the petitioners and the clients of Mr.Nanavaty had come to an end on expiry of period of 20 years, i.e. after the expiry of period of settlement arrived at in Civil Suit No.77/61. Once the plaintiffs of Civil Suit No.77/61 have accepted the abandonment of their right to perform puja on account of settlement incorporated in the purshis, no such hereditary right to perform puja can be legitimately claimed by the petitioner, more particularly, in view of the fact that the petitioners and the plaintiffs of Civil Suit No.77/61 have not only acted upon the settlement but have enjoyed the benefit of such settlement all throughout i.e. upto expiry of 20 years, from 18.2.69. Not only that but from 18.10.94 onwards the appointment of the petitioner was only for one year and the said appointment is an independent appointment which was accepted by the petitioner and various terms and if conditions of said appointment order dated 15.6.94 are seen it becomes clear that it was not on account of recognition of hereditary right of the petitioner to perform puja but was by way of contractual appointment

for performance of puja for a period of one year. When the said period of one year was to expire on 15.6.1995 it appears that on 2.6.95 by way of ingenuity the petitioner has approached this court claiming hereditary right of performance of puja apprehending that somebody else may be appointed by the Govt as pujari and therefore right which was abandoned as back as 20 years is sought to be reagitated though asseertion of such right was barred. The claim made by the petitioner, in view of the above, is barred by the provisions of Order 23 Rule 1 of C.P.Code and analogous principles thereto the petition is also barred by constructive resjudicata and principles of public policy and therefore, there is no substance in the contention of the petitioner that there is hereditary right of the petitioner to perform puja as Bhattji pujari of Ambaji Mataji temple and the State Govt is bound to recognise such right and the action of denying such right can not be sustained in the eye of law.

14. It is also required to be noted that the aforesaid aspect is coupled with the fact that the property and the administration of the temple is vested with the State Govt and when the State Govt has in the larger public interest has framed the scheme which only could provide for appointment of pujari it can not be said that the existing pujari has any vested right to perform puja in a temple over the right of State. Even during the earlier period when the temple was under the control of ruler it is wellknown that the pujari had right to perform puja and therefore he could receive his maintenance from the State or by accepting the offerings made to the God/Godess at the time of performance of puja. It is true that religious sentiments of the worshipers and the followers are attached to performance of puja where pujari plays an important role, but, at the same time, it would be against the basic principles of Hindu religion if the rights of pujari to perform puja are read for all times to come. In the case before the Supreme Court, i.e. Mst. Raj Kali Keur (supra) the question was whether a female has a share in the right to perform puja or not, and there the Apex Court held that the female member can have share, but in the case before us, the socalled right to perform puja, in any case, is abandoned and not only that but it is allowed to let go because of settlement by way of contractual appointment for a limited period and therefore neither the plaintiffs of Civil Suit No.77/61 nor their legal heirs can assert as a matter of right that they have right to perform puja and the State is bound to allow them to perform puja. It appears that petitioner and others who were party to civil suit No. 77/61 accepted the right of the State for appointment of pujari and abandoned the right to perform

puja as back as in 1969 and continued to enjoy the benefits of such settlement. Therefore, raising dispute for the first time after a period of 25 years, i.e. in the year 1995 shows that the petition lacks bonafides and is nothing but a ingenuine attempt to see that only the petitioners and the plaintiffs of Civil Suit No.77/61 and their legal heirs are allowed to perform puja and therefore, I am of the view that the Special C.A.No.4441/95 is thoroughly misconceived and is barred by resjudicata and the principles analogous to the same and also lacks bonafides and therefore the petitioners can not be entrusted with the writ of this court nor on merits the petitioners are entitled to any relief from this court.

15. Now the facts of the Special Civil Application 6827/98 preferred by Krishnalal Vithalji Thaker during his life time are required to be examined. So far as late Krishnalal Vithalji Thaker is concerned, it is true that he was not party to the suit or the settlement arrived at in Civil Suit No.77/61. However, his name was considered for the first time when the order dated 4.5.95 came to be passed by the State Govt for making appointment of pujaris by rotation for each year to everyone whose names are mentioned in the said order. The contents of the said order dated 4.5.95 and its effect is also discussed earlier and therefore it is not repeated. However, the representation shows that after the appointment of Kantilal Mohanlal Thaker, late Krishnalal Vithalji Thaker was to be appointed from 16.6.98, but for the reasons which are not disclosed, it appears that as stated above, the son of Mahendrakumar Kantilal Thaker was continued as pujari pursuant to the order dated 15.6.98 though his legitimate claim was for the period from 16.6.97 to 15.6.98 and the petitioner-Krishnalal Vithalji Thaker also made representation to the State Govt on 5.6.98, and in the said representation (copy is at annexure "D" to the petition) it has been stated that attempts are being made by four persons who have already enjoyed the rotation of one year to see that the petitioner may not be allowed to perform puja and therefore he had requested the State Govt to pass appropriate orders. It appears that ultimately on 13.8.98 the order was passed for the appointment of petitioner-Krishnalal Vithalji Thaker as pujari and it is the case of the petitioner that he had taken over the charge on the very day, i.e. 13.8.98 and as per said appointment order the petitioner had to continue to perform puja upto 12.8.99 and pending the operation of the said order the State Govt passed an order dated 20.8.98 whereby the appointment of Krishnalal as pujari came to be terminated on reconsideration and in

his place Kannaiyalal Rasiklal Thaker who already worked as pujari pursuant to the order dated 4.3.95 for a period from 16.6.94 to 15.6.95 was appointed as pujari for the period from 20.8.98 to 19.8.99 and under those circumstances the petitioner-Krishnalal approached this court by the present petition.

16. Mr.P.K.Jani appearing for the petitioner contended that the order dated 20.8.98 terminating the appointment of the petitioner as pujari is in breach of principles of natural justice because no opportunity of hearing, whatsoever, has been given to the petitioner by the State Govt before terminating the appointment. Mr.Jani also submitted that after the expiry of period of settlement it may be said that the State Govt had made the appointment of various persons whose names are mentioned in the order dated 4.3.95 in view of clause 39 of the Scheme. Mr.Jani submitted that there was neither justification nor any material before the State Govt to reconsider the earlier decision which was taken as back as on 4.3.95 and acted upon thereafter by passing order dated 13.8.98 and he therefore submitted that there was no reason for the State Govt to cancel the earlier order by which the rights were conferred upon the petitioner for performing puja. Mr.Jani also submitted that, as a matter of fact, the affidavit in reply has been filed by the State Govt in Special C.A.No.4441/95 which is preferred by Thakar Kannaiyalal Rasiklal wherein it has been stated that the rights of the petitioner therein can not be recognised to perform puja and Mr.Jani submitted that in the affidavit in reply it has been stated that the pujari is being appointed as per clause 39 of the Scheme and he further submitted that a contrary stand is taken subsequently when the impugned order dated 20.8.98 is passed for terminating the appointment of the petitioner as pujari. Mr.Jani submitted that as per the terms of the appointment order the State Govt can appoint competent legal heirs of pujari during the period when the appointment order operates and therefore he submitted that pending the petition due to interim order passed by this court the petitioner has not been able to perform puja and he further submitted that as the petitioner has now expired, but since the legal heir of original petitioner who has come on record by way of Civil Application 423/02 in Spl.C.A.No.6827/98 is the son of the original petitioner, he may be allowed to perform puja for the remaining period in place of original petitioner.

17. Mr.Jani therefore submitted that though the prayers are for directing the Govt to continue with the order dated 13.8.98 and quash the order dated 20.8.98.

He submitted that appropriate orders may be passed by passing consequential orders as submitted by him in the affidavit filed on 17.4.2002 by Vishnuprasad K.Thaker, son of original petitioner who is permitted to be substituted as petitioner.

18. On behalf of the State Govt Mr.Shelat, Ld.AG appearing with Mr.A.D.Oza, Ld.GP that the petition has become infructuous in as much as appointment of the original petitioner was in any case for the period upto 12.8.99 and the said period has expired. Mr.Shelat further submitted that even the impugned order dated 20.8.98 was to remain in operation upto 19.8.99 and the said period has expired. Mr.Shelat therefore submitted that since the petitiion has become infructuous no relief can be granted to the petitioner. Mr.Shelat further submitted that the State Govt has already taken decision for implementing the clause 39 of the scheme. Mr.Shelat has made a statement before this court that within a period of one year the State Govt. will make appointment of pujari as per clause 39 of the Scheme and until such appointment is made under clause 39 of the Scheme the present arrangement of giving chance to the legal heirs of Bhattji Pujari would be continued.

19. Mr.J.R.Nanavaty appearing for the applicants of Civil Application No.9542/01 in Special C.A.No.6827/98, i.e. Bharatkumar Madhavlal, Mahendrakumar Kantilal and Bhanuprasad Ramshankar as well as Mr.Thakar appearing for respondent No.4-Shri Kannaiyalal Rasiklal Thaker have reiterated that they have the hereditary right to perform puja and the same is recognised and it is further submitted that though Clause 39 of the Scheme provides for appointment but the same is given a go-by by implied conduct of the State Govt by giving appointment to their client as pujari. Mr.Nanavaty submitted that the aforesaid implied conduct has continued after the expiry of period of 20 years from the date of settlement, i.e. from 1989 onwards and further submitted that there is clear order from 1995 onwards and therefore Mr.Nanavaty submitted that now the State Govt can not invoke the clause 39 of the Scheme and therefore he submitted that in any case since there was no hereditary right of Krishnalal, the termination was legal and valid and he submitted that the legal heirs of Bhattji Pujaris who were parties to the settlement arrived at in Civil Suit No.77/61 have only the right to perform puja and nobody else and therefore he submitted that in any case neither Krishnalal nor his son Vishnuprasad can be allowed to perform puja even if the court finds that there is any illegality in terminating the appointment and even if the matter was to be examined on merits, Mr.Shelat and

Mr.Nanavaty submitted that no relief can be granted to the petitioner.

20. Mr.Shelat also alternatively submitted that in any case the induction of the name of the petitioner at the time of passing order dated 4.3.95 was without any basis and when the State Govt upon reconsideration deleted his name or terminated the appointment, it can not be said that any illegality is committed because Mr.Shelat submitted that for addition of another person it was necessary for the Govt to resort to the procedure under clause 39 which can be by way of public advertisement which was admittedly not done earlier when the order dated 4.3.95 came to be passed by the State Govt. Mr.Shelat therefore submitted that since the initial appointment of Krishnalal could not be sustained, the termination of his appointment can not be said to be illegal.

21. The last contention of Mr.Shelat on the point that initial appointment of Krishnalal could not be sustained in the eye of law and therefore the termination order can not be said to be illegal primafacie appears to be attractive but on close scrutiny of the record of the State Govt itself it appears that the said contention is an after-thought and is blowing hot and cold at the same time and therefore can not be accepted for the reasons stated hereinafter. Mr.Shelat submitted that in any case clause 18 of the appointment order provided that the Govt had right to terminate the appointment without any notice and therefore the action can not be said to be illegal or without authority.

22. It is a fact that the order dated 4.3.95 for appointment of five persons was passed by the State Govt for allowing each of them to work as pujari for one year. In the proceedings of Special C.A.No.4441/95, on behalf of State Govt., Smt.B.D.Trivedi, Under-secretary, Legal Department has filed affidavit in reply wherein at para 9 it has been stated as under:

"The Govt.of Gujarat after careful consideration considered the aspect and proposed a five years progrmme from 16.6.94 onwards for the following five persons:

(i) Shri Kannaiyalal Rasiklal Thaker
(ii) Shri Madhavlal Lallubhai
(iii) Shri Ramshankar Thaker
(iv) Shri Kantilal Mohanlal Thaker

(v0 Shri Krishnalalji Vithalji Thaker.

In view of the aforesaid decision the following facts emerge to appoint as "Pujari-Bhattji" to perform the religious rites:-

(i) Kanaiyalal R.Thaker 16.6.94 to 15.6.95
(ii) Madhavlal Lallubhai 16.6.95 to 15.6.96
(iii) Ramshanker Thaker 16.6.96 to 15.6.97
(iv) Kantilal M.Thaker 16.6.97 to 15.6.98
(v) Krishnalal V.Thaker 16.6.98 to 15.6.99

Further, at para 10 of the affidavit it has been stated as under;

"At the outset I say and submit that pursuant to the decision taken and implemented the petitioner was given appointment for a period of one year from 16.6.94 to 15.6.95. It is respectfully submitted that before implementing the orders and terms of appointment the Govt.of Gujarat examined all the aspects while extending the benefits and accordingly (i) Kannaiyalal Rasiklal Thaker, (ii) Bharatkumar Madhavlal (son of Madhavlal Lallubhai against the place of deceased Madhavlal Lallubhai), (iii) Bhanuprasad Ramshankar Thaker (son of Ramshankar Thakar against the place of deceased Ramshanker Thakar), (iv) Thaker Mahendra Kantilal (son of Kantilal Mohanlal against the place of deceased Kantilal Mohanlal) and (v) Krishnalalji Vithalji Thakar and accordingly decision has been implemented and ordered to be executed and the petitioner has enjoyed the benefits of the decision and accordingly he had enjoyed the terms of appointment and now the present petition challenging the action of the authorities are totally misconceived in law and facts and the petitioner can not be permitted to approbate and reprobate on one hand and settlement recorded, executed and implemented by the authorities."

23. The above clearly shows that the State Govt had in unequivocal terms declared before this court in the proceedings of Spl.C.A.No.4441/95 that the order dated 4.3.95 is passed after careful consideration and is implemented and acted upon. As against the aforesaid stand, in Special C.A.No.6827/98, affidavit in reply is filed by one Mr.J.R.Damor, Under-secretary, Legal Department, wherein at para 8 it has been stated as under:

"However, without giving any advertisement or without folllowing the procedure in 1994 the name of the petitioner was included as the 5th pujari. It seems that the said name was included without any procedure and it was required to remove the name of the petitioner and therefore it was decided to remove the name of the petitioner There were four pujaris who were there originally and they were parties to the compromise and if any other person other than those four pujaris wishes to do seva puja the Government is required to initiate the procedure in accordance with law. I submit that all these facts were considered and thereafter the impugned order was passed cancelling the appointment of the petitioner."

The above clearly shows that only with a view to justify the subsequent action for termination, the stand taken and the declaration made earlier in the proceedings of Spl.C.A.No.4441/95 is not only given a go-by but reverse stand is taken which is not correct on the part of the State Govt who is supposed to act in a just, fair and reasonable manner. Further in the affidavit filed in Spl.C.A.no.6827/98, in the same para 8, it has been further mentioned as under:

"I submit that as per condition No.18 of the appointment order the Govt has right to cancel the appointment at any time without giving any notice to the concerned pujari."

As per condition No.18 of the appointment order, the power of terminating the appointment without giving any notice to concerned pujari is there with the Govt, but a perusal of said condition of the appointment order clearly shows that such power can be exercised only if there is any breach of any of the terms and conditions of the appointment order or misconduct committed on the part of pujari. But, in any case, as per settled principles of law, even in the matter of contractual appointment the Govt can not act as a private party to exercise power for termination of appointment in an arbitrary manner or upon any extraneous consideration. It is well settled that the State Govt even in the matter of contractual relationship is supposed to act in just, fair and reasonable manner It appears that just, fair and reasonable manner is required to be followed more vigorously in cases where the State is dealing with the subject of performance of puja in a temple which consequently attaches the religious sentiments of the public at large. Thus, it is not necessary that the

State Govt is in every case required to give opportunity of hearing to the person concerned before terminating his appointment as pujari. But, it varies from case to case and the facts of each case. In a given case if the conduct of the pujari is found by the State Govt is not befitting to the religious sentiments of the public at large, then the Govt can exercise power for terminating the appointment even without notice. There are various cases of such type which are not required to be elaborated at this stage since in the present case the stand of the Govt for exercising power of termination is only on the ground that in the year 1994 the name of Krishnalal came to be inducted without giving advertisemen. As declared before this court in the proceedings of Spl.C.A.No.4441/95 the name of Krishnalal came to be inducted in the list of appointment of pujaris after careful consideration and the averments made in the petition and the affidavit in reply dated 17.4.02 filed by Vishnuprasad Thaker together with documentary evidence shows that Krishnalal was performing puja along with other persons. Therefore, it can not be said that the order dated 4.3.95 passed by the State Govt is without any material or in any case same could not be sustained in the eye of law, more particularly, when the State Govt has declared before the court that the said order was passed after careful consideration. As a matter of fact, I am of the view that the State Govt can not be allowed to take a contrary stand so as to justify its subsequent action for termination of appointment of Krishnalal.

24. It is true that the termination is not a simple termination, but is coupled with simultaneous appointment of Kannaiyalal Rasiklal Thaker who himself has also enjoyed the benefit of the order dated 4.3.95. No material is produced by the State Govt to justify the appointment of Kannaiyalal Rasiklal Thaker except the bare statement made in the affidavit at para 5 which reads as under:

> "The State Govt.had made the appointment of Shri K.R.Thaker rightly on meritorious grounds. I submit that the petitioner has no right for appointment as Bhattji Pujari. It is within the exclusive authority of the State Govt to consider as to who could be best suited better worship of the Goddess."

25. At the request of Mr.Jani I have also perused the original record and same shows that upon recommendation dated 14.5.98 of the Under-secretary, Deputy Secretary and Joint Secretary as well as the Secretary & RLA dated 15.5.98 on 13.8.98 a decision was finally taken by the

top most authority of Law Ministry for issuance of appointment order of Krishnalal Vithalji Thaker for one year from 13.8.98. Thereafter, suddenly without there being any additional material a noting is moved taking a reverse stand that the procedure undertaken in the year 1994 for inclusion of name of Krishnalal was not transperant and therefore his name deserves to be deleted and upon the said noting the top authority at the State Govt level has taken decision of terminating the appointment and simultaneous appointment of Kannaiyalal Rasiklal Thaker for one year. The other aspects of the original file are not required to be discussed. Further, even the original file does not reflect that there was any new material which required termination of appointment of Krishnalal or showing any special material for appointment of Kannaiyalal. The ground of not giving advertisement while including the name of Krishnalal at the time when the order came to be passed in the year 1994 does not inspire any confidence because as stated above on 13.8.98 the decision is taken and also it is acted upon and I am of the primafacie view that subsequent decision taken on 19.8.98 which is acted upon on 20.8.98 is not only not inspiring any confidence but appears to be a clear afterthought and is contrary to the earlier stand taken by the State Govt in Spl.C.A.No.4441/95. Therefore, on over all facts and circumstances of the case and upon perusal of the original record I am of the view that the ground of not giving advertisement when the order for appointment of pujari came to be passed in 1994 may be genuine in other cases independently but is not in bonafide exercise of power and therefore I am of the view that the action of terminating the appointment of Krishnal as pujari and of appointment of Kannaiyalal in his place is arbitrary exercise of power on the part of the State Govt. The said exercise of power is coupled with the fact that admittedly no opportunity of hearing has been given to Krishnalal though there were no extraordinary circusmtances on record for dispensing with the principles of natural justice. Under the circusmtances, the order dated 20.8.98 terminating the appointment of Krishnalal and making appointment of Kannaiyalal deserves to be quashed.

26. The next aspect which is required to be considered is whether it can be said that the petition has become infructuous or is it a case where no relief can be granted to the petitioner on account of delay caused in deciding this petition. It is true that the appointment order of Krishnalal was for the period from 12.8.98 and is also true that the appointment of Krishnalal was for the period upto 19.8.99, but at the

same time, the fact remains that this court (Coram: M.S.Parikh,J) while admitting Spl.C.A.No.6827/98 passed the interim order whereby the State was directed that neither appointment of the petitioner, i.e. Krishnalal nor the respondent No.4 will be made till the final disposal of the petition and had directed to appoint anyone out of Madhavlal Lallubhai, Ramshankar Thakar or Kantilal Mohanlal Thakar as pujari. It is true that the aforesaid order came to be passed by this court upon the consent of petitioner as well as respondents. But the fact remains that neither the petitioner Krishnalal nor the respondent No.4-Kannaiyalal was allowed to perform puja and by way of interim order their appointment was prohibited and the other persons who were not party to the proceedings continued to enjoy the benefit of pending proceedings. Therefore, a situation is created on account of interim order passed by this court for appointment of third party to proceedings which could only be done by the consent of the petitioners and therefore, consent can not be read for abondonment of any right at the time of final adjudication of the impugned order. Since on account of interim order passed by this court the petitioner as well as the respondent No.4 were not allowed to be appointed as pujari, I am of the view that if ultimately the petitioner establishes that the order of termination as pujari was illegal and the appointment of respondent No.4 in his place was also illegal, then the court would not be powerless to undo the wrong thing caused on account of illegal orders passed by the State Govt. The said aspect is coupled with the fact that a situation is created that on account of interim order passed by this court the benefits conferred are deprived of and that the interim order passed by this court must be allowed to be restored by the court itself with a view to see that the party to the proceedings may not suffer on account of delay caused in deciding the petition and the justice is done at its end results. Therefore I can not accept the contention of Mr.Shelat that the petition should be thrown away as having become infructuous or that no relief can be granted to the petitioner now since the period has expired. As a matter of fact, even otherwise also the State Govt as stated above has made a statement that the appointment of pujaris as per clause 39 of the Scheme will be made within a period of one year and as found in the proceedings of Spl.C.A.No.4441/95 and as also rightly contended by the State Govt no hereditary right of Madhavlal Lallubhai Padhya, Ramshankar Mangalji Thakar, Kantilal Mohanlal or Kannaiyalal can be recognised for performance of puja and keeping in view the stand of the State Govt that it will take one year time for

implementing Clause 39 of the Scheme for appointment of pujari, I am of the view that if the State Govt is desirous of continuing the present arrangement there is no reason why Krishnalal who has suffered at the hands of the State Govt for illegal and arbitrary exercise of power should be deprived of his right to perform puja which he has otherwise not enjoyed for the period of 357 days (if counted from 20.8.98 to 12.8.99).

27. I can not accept the contention of Mr.Shelat that even if this court finds that the contract for appointment of pujari was wrongly terminated the relief can not be granted for the performance of puja since the period has expired and at the most the petitioner should be relegated for recovery of damages for breach of contract. There are two reasons for not accepting this contention, i.e. in the present case it is not a purely contract of a personal service to the Govt, but is a contract of personal services to Godess in a temple. Therefore, if proper orders for performance of puja by the petitioner is made, same would not result into compulsion on the part of the Godess to accept the puja, more particularly, because, the State Govt is a machinery through whom pujari is authorised to perform puja and therefore the normal circumstances which the court would consider while passing the decree or ordering for specific performance of contract of personal services would not be applicable to the facts of the present case. The second reason is that it is neither the case of the State Govt nor there is any material worth the name to show the petitioner had committed breach of any terms and conditions of the agreement or the conduct of the petitioner is such which would disentitle him to perform puja and therefore even considering the religious sentiments of the public at large it can not be said that the petitioner is a person who can not perform puja of Ambaji Mataji at Ambaji temple.

28. Mr.Shelat submitted that in any case even if the petitioner was to perform puja he has expired and his right of performance of puja was given to the petitioner Krishnalal himself and in his place his son cannot as a matter of right assert that in the place of his father he should be permitted to perform puja for remaining period. A perusal of conditions of appointment order of Krishnalal shows that condition No.1 provides that if the person concerned expires the Govt may appoint the legal heirs of said pujari. A perusal of affidavit filed in Spl.C.A.No.6827/98 shows that in place of concerned pujari the State Govt in exercise of powers has allowed the legal heirs of the said pujari because even in the affidavit in reply filed in Spl.C.A.No.4441/95 at para 10 it has been stated by the Govt that in place of deceased

Madhavlal Lallubhai appointment is made to his son Bharatkumar Madhavlal, in place of deceased Ramshankar appointment is made to his son Bhanuprasad Ramshankar, in place of deceased Kantilal Mohanlal appointment is made of his son Thakar Mahendra Kantilal. Not only that, but even in the Civil Application No.9542/01 preferred by the aforesaid three persons at para 2.5 a submission is made as under:

> "It is pertinent to note that even at the time of passing of order dated 4.3.95 all the persons stated therein were already expired and applicants and respondent No.4 who are the legal heirs of original Bhattji Pujari were performing actual seva puja in the temple. The subsequent orders passed by the respondent No.1 i.e. Government, however, has taken care of specifying names of the applicants."

29. It is also stated in the application that this court passed the interim order on 21.8.98 directing the State Govt to appoint anyone of a out of Shri Madhavbhai Lallubhai, Ramshankar Thakar or Kantilal Mohanlal Thakar to work as Bhattji Pujari and all of them had expired. It has been also stated in the application at para 2.5 as under:

> "Even the respondent No.1 has understood the aforesaid order in its true spirit and passed an order dated 25.6.99."

A perusal of the statement made in the application clearly shows that though this court passed order on 21.8.98 to appoint anyone out of Madhavlal Lallubhai, Ramshankar Thakar and Kantilal Mohanlal Thakar as Bhattji pujari the State Government has appointed the legal heirs of respective persons as Bhattji pujari.

30. The above clearly shows that, giving a right or allowing the legal heirs to perform puja during the valid period of contract or appointment is a routine and normal exercise of power and more over there is no material shown to this court nor it is contended by the State Govt that there is any special material which would disentitle the son of Krishnalal Vitthalji namely Vishnuprasad to function as pujari in place of his father.

31. Keeping in view the aforesaid aspect and that Vishnuprasad, son of original petitinoer is brought on record, I am of view the State Govt can be directed to allow the son of the original petitioner, namely, Vishnuprasad to perform puja as a successor of Krishnalal for the remaining period with a view to render justice to th party to the proceedings who has suffered on account

of illegal exercise of powers and illegal action of the State Government.

32. In the result, Special Civil Application No.4441/95 is dismissed and rule is discharged with no order as to costs.

33. So far as Special Civil Application No.6827/98 is concerned, same is allowed by quashing and setting aside the order dated 20.8.98 passed by the State Govt terminating the appointment of the original petitioner Krishnalal and appointing Kannaiyalal as Bhattji Pujari. Since the period of appointment of the original petitioner has expired on account of pendency of the petition and since the original petitioner has already expired and his son Vishnuprasad has come on record as legal heir, by way of consequential order, the State Govt is directed to issue appropriate orders allowing Vishnuprasad Thakar as Bhattji Pujari for performance of puja for 357 days keeping in view the observations made hereinabove and such exercise of issuing appropriate orders shall be completed by the State Govt within a period of two weeks from today. Rule is made absolute accordingly with no order as to costs.

34. Civil Application Nos 3208/02, 404/00 stand disposed of accordingly with no order as to costs.

35. Office is directed to return the original file submitted by Ld.AG to the Ld.AG or to the Ld.GP.

17.6.02 (JAYANT PATEL,J)

After the pronouncement of this order, Mr. Nanavaty appearing for those persons who were directed to be appointed as Pujari pursuant to the interim order of this Court, requested that operation of this order may be suspended for a period of one month.

Mr. Jani, appearing for the original petitioner objected to such request. Keeping in view the aspect that clients of Mr. Nanavaty, were acting pursuant to the interim orders of this Court, they cannot be said to be perjudiced on account of final order passed by this Court since but for the interim order pending the petition, they would not have been authorised to work as pujaris. Even otherwise also, the State is directed to pass appropriate orders within a period of 15 days. Under these circumstances, I am not inclined to accept such request, hence rejected.

Dt. 17.06.2002. [JAYANT PATEL, J]